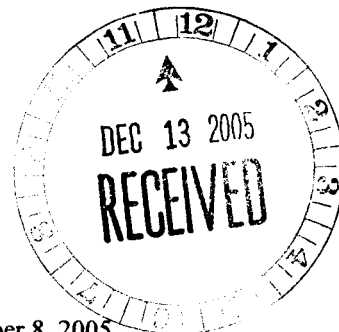


215327

Environmental Resource Return Corp.

Recycling Technologies for the Future



The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC. 20423

December 8, 2005

Re: Formal comment on Petition for Declaratory Order National Solid Wastes Management Association, et al FD-34776.

Dear Secretary Williams:

Enclosed you will find the comments of ERRCO Recycling in support of the petition for Declaratory Order filed by National Solid Wastes Management Association, et al, Finance Docket Number 34776.

COMMENTS

ERRCO C&D Recycling is a privately held recycling facility located in Epping, NH. Our company has been in the business of processing all types of C&D debris since 1995. Since that time we have recycled over 1.3 million tons of mixed C&D materials into such useful products as Bio-fuel wood chips, road base aggregates, landfill covers and metals. We are governed and permitted by the State of NH DES and under local regulations from the town in which we reside. Our facility is one of the largest of its kind and accepts materials from all over the New England region. Over the past five years several rail transfer facilities have been permitted and regulated by the State of Massachusetts and the towns in which they also reside. Because of the non-homogeneous nature of mixed C&D materials we are highly regulated for things such as hazardous wastes, asbestos contamination, ground water contamination, fugitive dust emissions, odors, noise and truck traffic safety concerns.

For the following reasons we do not feel that the STB should have exclusive jurisdiction over Solid Waste Transfer Stations that are proposed on rail haul locations.

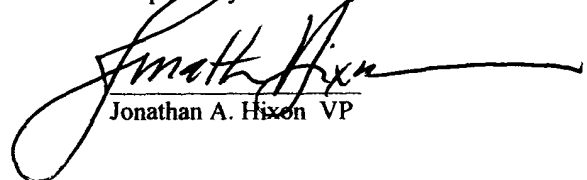
1. Solid Waste Transfer Stations currently exist in every metropolitan area throughout the United States. If solid waste is not shipped directly to a disposal site, it is generally run through a transfer station, where it is processed, stored and shipped for disposal by a variety of transportation modes, including rail, truck and barge. If a solid waste transfer station happens to be located on or near a rail line, this does not mean that the facility is integrally related to the provision of rail transportation.
2. Many transfer stations separate out recyclables such as wood, aggregates, metals, etc to create useful products for safe reuse or disposal. These separation and segregation activities have no relation to rail transportation.
3. Many transfer stations use several different modes of transportation that may be dependent upon the location of the destination facility, the distance to the facility and the competitive pricing of the different transport options. Transfer stations that are located adjacent to rail lines will review the same information and consider the same variables in deciding which modes of transport to use for any particular shipment. How would a transfer station that ships material by truck be integrally related to rail transportation?

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4. We do not contest the exclusive jurisdiction of the Surface Transportation Board over legitimate rail haul facilities and rail functions. We do not contest the STB's exclusive jurisdiction over true intermodal facilities, which simply serve to transfer containers of waste (or any other material) from truck to rail. The facility described in the NSWMA's Petition is not a true intermodal facility; it is a solid waste management facility, involved in the management of solid waste. This activity does not fall within the STB's exclusive jurisdiction.
5. The STB has no meaningful environmental controls over intermodal facilities and we believe true intermodal facilities do not need many environmental controls. Solid waste transfer stations, on the other hand, manage materials that require careful controls. In the absence of environmental controls, these facilities can create risks to public health and the environment. We feel strongly that the subject of the NSWMA's petition is a clear example of this.
6. The Federal Government does not regulate solid waste facilities, due in large part to the extensive network of state and local laws that apply. Exclusive STB jurisdiction over transfer stations effectively strips these facilities of any meaningful environmental regulation, oversight, or control and presents a serious risk to public health and the environment. Will the STB become the environmental watchdog for these facilities? Will the STB carefully regulate facility design to ensure protection of the public health and the environment? Will the STB replace the continuous inspections that state and local governments perform? Who will respond to environmental emergencies that may be created by the lack of regulation? Who will address citizen's complaints?
7. Due to the lack of clarity from the STB on this issue, some railroads have been aggressively asserting to states and municipalities that they are exempt from all state and local laws, regardless of what they want to build. A few short line railroads are trying to establish regulation-free economic developments that are at best marginally related to rail transport. The STB must stop this activity, especially when it concerns activities that have the ability to directly and adversely impact public health and the environment. The Board currently has no controls in place to prevent abusive claims of exclusive jurisdiction by transfer station operators masquerading as railroads in order to bypass state and local controls. The NSWMA Petition is an attempt to solve this problem and we request that the STB issue a direct and clear ruling that prevents these few railroads from stepping too far over the line.

For the foregoing reasons, ERRCO C&D recycling urges the Surface Transportation Board to grant NSWMA's Petition for Declaratory Order.

Respectfully submitted,



Jonathan A. Hixon VP